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THE NEW SOVIET LEGISLATION CONCERNING THE DEATH PENALTY

by

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It has been the claim of Soviet leaders that crime as a social phenomenon will disappear under the Communist system, but recently the Kremlin has found it necessary to restore severe measures against this "vestige of capitalism."

A decree issued on May 5, 1961, by the Presidium of the Supreme Soviet of the USSR has augmented the number of crimes punishable by execution, has increased the severity of punishment for some crimes, and has made persons convicted of certain other crimes ineligible for parole and mitigation of sentence.

The use of the death penalty in the Soviet Union has reflected the need of the regime from time to time to crack down on one or another manifestation inimical to the Communist state. Thus the death penalty has been arbitrarily restricted and equally arbitrarily extended in the course of Soviet history.

Analysis of the Soviet press leads to the conclusion that the crime rate in the USSR has been climbing steadily in recent years. Reports of armed robbery, rape and murder are seen daily in the Soviet newspapers, but increasingly more space is devoted to such offenses as swindling, bribery and embezzlement. It is against this category of crimes that the May 5 decree is aimed.

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More than forty years after the establishment of the Soviet regime, which claimed that the Soviet system will lead to the disappearance of crime, it has been found necessary in the USSR to restore severe measures against this "vestige of capitalism."

On May 5, 1961, the Presidium of the Supreme Soviet of the USSR promulgated a decree entitled "On the Increased Struggle Against Particularly Dangerous Crimes." The decree established the death penalty by firing squad for:

Large-scale embezzlement of state or public property, the counterfeiting for the purpose of sale, and the sale, of currency and securities, carried out in the form of business, and also for particularly dangerous forms of recidivism and... for acts of terrorism at places of imprisonment against convicts being rehabilitated or for attacks on the administrative personnel, or for organizing groups of convicts with this in mind, or taking an active part in such groups (Article 1, Izvestia, May 7, 1961).

Prior to this decree, death penalty by firing squad had been applied for treason, espionage, sabotage, terrorism, banditry and premeditated murder

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under aggravating circumstances. Article 4 of the decree abolished the provisions for parole and for partial remission of the unserved portion of a sentence, contained in article 44 of the principles of criminal legislation of the USSR of 1958. Harsh treatment is now reserved for cases of recidivism, particularly if the reversion to crime takes place before completion of a reduced sentence. Article 4 also applies to persons sentenced for particularly dangerous state crimes defined as banditry, the counterfeiting and sale of currency and securities, offenses against currency regulations, large-scale embezzlement of state property, premeditated murder under aggravating circumstances, rape, armed robbery, the receiving or giving of bribes and acting as an intermediary (in the transaction), under aggravating circumstances.

Article 5 states that in cases where the death penalty is not applied an additional sentence of from two to five years may be imposed for crimes listed in articles 1- 10 (treason, espionage, terrorism, sabotage, wrecking, anti-Soviet agitation and propaganda, the preparation of particularly dangerous state crimes, including those committed against other workers' states), article 14 (banditry), article 15 (smuggling) articles 23 - 25 (damaging to communication facilities and means of transport, the counterfeiting and sale of currency and securities, offenses against the currency regulations), and article 27 (the concealment of state crimes).

Thus, the new decree involves three changes: 1) the number of crimes punishable by execution is increased; 2) some crimes are no longer subject to parole and mitigation of sentence; and 3) some crimes are made punishable by more severe sentences.

The application of the death penalty in the USSR has an interesting history. It was introduced immediately after the Communist seizure of power--at first in the Cheka organs, which were formed on December 20, 1917; and a little later in the revolutionary tribunals, formed on June 18, 1918 (Ugolovnoe Pravo, Criminal Law, 4th Ed., Moscow, 1948). On September 5, 1918, the decree "on red terror" was published (Sobranie Uzakonenii RSFSR, Collected Decrees of the RSFSR, No. 63, 1918), which provided the death penalty not only for political crimes, but also for black marketeering, including the sale of the products of one's own work, swindling, private distilling and the sale of the liquor so distilled, and petty larceny (*ibid.*, Nos. 4 - 5, 1920, article 22). On January 17, 1920, the death penalty was abolished, but reintroduced within two months (Ocherki Po Istorii Sovetskovo Ugolovnovo Pravila, An Outline History of Soviet Criminal Law, 1917 - 1918, Moscow, 1954, p. 190). The principles of the criminal code of the USSR and of the union republics of 1924 defined the death penalty as a "temporary measure of punishment" (article 13). On the tenth anniversary the October Revolution, the Central Executive Committee restricted the use

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of the death penalty, which was henceforth to be applied only for state and military crimes and for armed robbery (Sobranie Zakonov SSSR, No. 61, 1927).

On August 7, 1932, the Central Executive Committee and Council of People's Commissars of the USSR issued a decree "on the safeguarding of the property of the state enterprises, kolkhozes, and co-operatives, and the consolidation of public (socialist) property" (Izvestia, August 8, 1932), which provided the death penalty for almost any type of embezzlement of state and public property. On April 19, 1934, death by hanging was introduced as a form of punishment. On June 8, 1934, the Central Executive Committee issued a decree fixing the death penalty as the main type of punishment for Soviet citizens convicted of treason and as the only punishment for military personnel convicted of the same crime (Sobranie Zakonov SSSR, No. 34, 1934, article 206). In September of the same year the death penalty was introduced for murder committed by military personnel under aggravating circumstances (ibid., No. 38, 1934, article 255). It must be noted that these changes applied only to official public legal proceedings. The G. P. U. and N. K. V. D. organs continued to apply the death penalty on a much larger scale on the basis of secret decrees.

This situation lasted until the beginning of World War II, when the whole country came under the jurisdiction of the military tribunals and extraordinary courts. Following the war, on May 26, 1947, the death penalty was abolished for crimes previously punishable by death, but the maximum sentence for each type of offense was increased from 10 to 25 years. In 1950, a campaign was inaugurated for the reintroduction of the death penalty, and on January 12, 1950, a decree was issued "on the application of the death penalty to persons committing treason, to spies, and persons carrying out acts of sabotage" (Vedomosti Verkhovnovo Soveta SSSR, Reports of the Supreme Soviet of the USSR, No. 13, 1950). On April 30, 1954, this decree was extended to persons committing murder under aggravating circumstances (ibid., No. 11, 1954).

On the basis of the principle of analogy, which was applied in Soviet criminal law until 1958, the introduction of the death penalty for premeditated murder also entailed its introduction for the theft of property accompanied by murder. The new principles of the criminal code of the USSR on December 25, 1961, which abolished the principle of analogy and reduced the maximum sentence from 25 to 15 years, legalized by a positive enactment the practice of passing the death sentence for murder committed while engaged in the theft of property (article 22).

The new decree of May 5, 1961, not only restores the situation regarding application of the death penalty prior to 1947, but also extends it.

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Up to 1947, the death penalty was not imposed on persons convicted of premeditated murder under aggravating circumstances, on recidivists and persons sentenced for serious crimes, for violating regulations at their place of imprisonment. Since the Twenty-First Party Congress, Premier Khrushchev and the entire Soviet press had, in the course of the struggle against "insignificant criminal elements," loudly proclaimed that "punitive" measures had been replaced by "educational measures." Reports were issued on the closing of camps and prisons for lack of use, on the retraining of the great army of officials in the state criminal apparatus and their replacement by the "new society." But the facts of life have failed to justify the hopes placed by the Soviet leaders on the "people's volunteer societies" and "comrade's courts."

Analysis of the Soviet press leads to the conclusion that the crime rate has not only failed to decrease but actually has been climbing steadily in recent years. Reports of cases of "hooliganism," armed robbery, rape, and murder are daily occurrences in the Soviet press. A special place on the blotter is occupied by offenses involving money and other property, such as swindling, bribery and the embezzlement of state and public property. The matter is further complicated by the unwillingness of Soviet citizens to work in the so-called "socialist sector." The union republics are now passing laws "on the increased struggle against anti-social, parasitical elements." The RSFSR issued such a law on May 5, 1961. In accordance with this law, "persons who refuse to do socially useful work, who earn income illegally or carry out other anti-social acts, are to be resettled in specially reserved areas for a period of from two to five years with confiscation of the illegally gained property" (*Izvestia*, May 6, 1961). Deportees are compelled to work at their place of confinement.

The law of May 5, 1961, is aimed not so much at robbers, rapists, and murderers as against persons convicted of embezzling state property. It is possible that the application of the death penalty to convicts who engage in activities against the prison authorities is an indication of increasing opposition to conditions in the Soviet penal institutions. The Party Central Committee, finding itself faced with crimes in every sector of Soviet life, has been compelled to resort to the supreme measures of punishment to combat crime. Thus, more than forty years after the founding of the Soviet Union, crime--a "bourgeois relic" which the Soviet leaders expected to disappear--is more rife than ever before in Soviet society.